

### **Remarks**

The applicant has carefully reviewed the Office action dated January 8, 2007, and the art applied therein to the claims. Claims 1-13 remain in this application, of which claims 1, 6, and 7 are independent. In view of the following remarks, reconsideration and allowance of the application are respectfully requested.

### **The Rejections Under 35 U.S.C. § 103**

In the Office action, claims 1-13 were rejected as being allegedly unpatentable over U.S. Patent No. 3,769,579 (“Harney”) in view of U.S. Published Application 2004/0210922 A1 (“Peiffer”). As explained below, the applicant respectfully submits that independent claims 1, 6, and 7, and claims dependent therefrom, are allowable over the combination of Harney and Peiffer.

### **Claims 1 and 7**

Independent claims 1 and 7 recite, *inter alia*, a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal.

To establish a *prima facie* case of obviousness, the prior art must teach or suggest each of the claim elements and must additionally provide a suggestion of, or an incentive for, the claimed combination of elements. See *In re Oetiker*, 24 USPQ. 2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 USPQ. 972, 973 (Bd. Pat. App. 1985); *In re Royka*, 490 F.2d 981 (CCPA 1974) and M.P.E.P. § 2143. As explained below, the applicant respectfully submits that neither Harney nor Peiffer includes a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. As a result, any combination of Harney or Peiffer necessarily fails to include a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. Thus, the pending claims are not obvious over the combination of Harney and Peiffer, and no *prima facie* case of obviousness has been made.

Harney is directed to a cable television monitoring system and describes a transponder for each television of a cable distribution system, which may be of the “set top” type. [Harney 1:42-52 and FIG.3]. The Office action contends that Harney 1:40-65, 2:21-67, and 3:1-61 teach a portable transponder to transmit an identification signal, the portable

transponder powered by a polling signal. However, the applicant respectfully submits that such sections of Harney do not make such a teaching.

In particular, the examiner refers to 2:7-38 of Harney (see pages 7 and 8 of the Office action) in support of the assertion that Harney allegedly teaches a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. While the aforementioned section of Harney describes a conventional television signal, as well as a television signal with an added start signal, these portions of Harney merely describe a manner in which the start signal may be invoked to initiate a reply for one or more transponders. As a result, the transponders described by Harney may send replies back to a distribution center, but Harney is silent as to employing such television signal(s) for the purpose of powering a transponder, much less a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal, as recited in claims 1 and 7.

Additionally, the examiner refers to 2:39-62 of Harney (see page 8 of the Office action) in support of the assertion that Harney teaches a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. However, these portions of Harney merely describe an example transponder that is initiated by the start signal described above. In particular, the television monitoring system of Harney includes an input cable from a distribution center that is accepted by a converter (12). [Harney 2:39-41]. Multiple television channels are accepted by the converter and selectively converted (via a selector knob) to a single output television channel. [Harney 2:41-46]. The transponder (16) of Harney includes an on-off switch (18) to effect a transponder bypass for periods when the converter is not used. [Harney 2:49-52]. For example, while the converter is not used when the television is not operating, the transponder may still be interrogated. [Harney 2:52-55]. However, Harney does not describe that the transponder is powered by a signal, much less describe a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal.

Moreover, the examiner refers to 2:63 through 3:23 of Harney (see pages 8 and 9 of the Office action) in support of the assertion that Harney allegedly teaches a portable transponder to transmit an identification signal, the portable transponder powered by a

polling signal. Instead, the aforementioned section of Harney merely describes structure within the transponder of Harney that responds to signals received from an input cable. While the structure described by Harney includes, for example, components to control gain, initiate a timer, and reset a counter, Harney is devoid of any description related to powering the transponder, much less a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal.

In view of the structure described by Harney (2:63 through 3:23 and FIG. 3), Harney also describes the operation of such structure, on which the examiner relies (see pages 9 and 10 of the Office action) in support of allegedly teaching a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. The applicant respectfully maintains that a careful review of Harney (3:24-65) confirms an absence of any description related to a transponder powered by a polling signal. Instead, Harney describes employing a counter that, in response to detecting the start signal as described above, enables a reply to the distribution center. The reply may indicate a transponder condition, such as a particular program being watched by a subscriber and a corresponding channel, but Harney fails to describe that such a reply signal, or any other signal, powers a transponder.

Much like Harney, Peiffer also fails to describe a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal. Nor does the Office action contend that Peiffer makes such a description. Instead, Peiffer is directed to methods and apparatus for identifying an audio signal with an audience measurement system that reads program-identifying labels from a digital audio signal frame. [Peiffer ¶0034]. Unlike a portable transponder powered by a polling signal, as recited in claims 1 and 7, Peiffer employs one or more of four different ways (signal identification techniques) to analyze a received digital program signal. [Peiffer ¶0026]. Any such labels, if found, are associated with a time and a time-stamped tuning record is generated. [Peiffer ¶0039]. Peiffer employs a tuning site that includes a receiver (34) that receives a source signal. [Peiffer ¶0041 and FIG. 2]. While Peiffer also includes a tuning measurement apparatus (52) to decode digital audio signals, Peiffer does not describe power applications associated with such signals. Accordingly, Peiffer does not describe a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal.

As neither Harney nor Peiffer includes a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal, as recited in claims 1 and 7, it follows that neither Harney nor Peiffer, alone or in combination, can render claims 1 and 7 obvious. Dependent claims 2-5 depend from independent claim 1, and dependent claims 8-13 depend from independent claim 7 and are allowable for at least the reasons discussed above. Therefore, the applicant respectfully requests allowance of claims 1-5 and 7-13.

#### **Claim 6**

Independent claim 6 recites, *inter alia*, monitoring a designated region for the presence of a transponder, the transponder powered by a polling signal. For at least the reasons discussed above in view of independent claims 1 and 7, the applicant maintains that neither Harney nor Peiffer, alone or in combination, teaches or suggests monitoring a designated region for the presence of a transponder, the transponder powered by a polling signal. As a result, any combination of Harney or Peiffer fails to disclose the subject matter recited by claim 6. The applicant respectfully requests allowance of claim 6.

#### **Conclusion**

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,  
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